

**COMPLETED ACQUISITION OF SUEZ S.A.  
BY VEOLIA ENVIRONNEMENT S.A.**

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**OVERVIEW SUBMISSION BY VEOLIA**

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**NON-CONFIDENTIAL VERSION**

7 March 2022

**CLEARY GOTTlieb STEEN & HAMILTON LLP**

## **Acquisition of Suez S.A. by Veolia Environnement S.A. Overview Submission by Veolia**

This submission to the Competition and Markets Authority (the “CMA”) is made by Veolia Environnement S.A. (“Veolia”) in the context of the CMA’s investigation into Veolia’s acquisition of Suez S.A. (“Suez”).<sup>1</sup> It provides an overview of the markets that are being considered by the CMA and explains how competition has developed, and continues to develop, in those markets. It does not attempt to provide a comprehensive response to every point raised in the CMA’s phase 1 decision, which Veolia will address in its other submissions during phase 2.

### **I. INTRODUCTION**

1. Veolia welcomes the fact that the transaction will be considered with a fresh pair of eyes at phase 2. It also welcomes the opportunity that a phase 2 investigation will give to explore the relevant markets in more detail.
2. Central to the issues identified by the CMA in its phase 1 decision and Issues Statement is the theory that there might be a subset of contracts for which only a small number of suppliers, including Veolia and Suez, are able to compete. The CMA focuses on a loosely defined subset of municipal contracts described as “complex” contracts – which is not a recognised term within Veolia or the industry more widely – and, to a lesser extent, collection services provided to commercial customers that have a “national” footprint. This characterisation of the markets does not match Veolia’s experience at all. Given the procedural limitations of the phase 1 process, Veolia had no meaningful opportunity to respond to these theories of harm in detail or gather additional evidence needed for the CMA to test them. In fact, as Veolia will show in this and its other submissions, the markets in question are nothing like this today.
3. The parties are involved in the collection, treatment and disposal of waste and, to a much lesser extent, the operation and maintenance of water and wastewater facilities for industrial customers.<sup>2</sup> Waste management companies compete to win contracts from local authorities and commercial customers. Broadly speaking:
  - For collection contracts, the service is straightforward because it involves picking up the waste and taking it to an appropriate treatment facility, sometimes referred to as “fetch and carry” services. For municipal customers, the facility is dictated by the customer. For commercial customers, the collection company chooses the most convenient facility.
  - Municipal disposal contracts involve disposing of waste at facilities operated on behalf of the local authority or at merchant facilities. They may also involve operating and maintaining a facility on behalf of the local authority.

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<sup>1</sup> This submission contains confidential business secrets that are protected from disclosure under Part 9 of the Enterprise Act 2002.

<sup>2</sup> The parties also overlap in the supply of mobile water services but Veolia has committed to divest its UK business as part of the commitments given the European Commission.

4. As these markets all involve transporting waste, they are provided on a local basis. Many companies compete in these markets at each level of the value chain. Some operate at different levels, while others specialise in particular services.
5. At phase 1, the CMA found only a handful of local areas in which it believed there was a realistic prospect of a substantial lessening of competition (“SLC”), and only when applying an approach that differs from that used in other CMA cases and adopting an extremely cautious share of supply threshold in local catchment areas. Veolia will comment in more detail on this local analysis in other submissions.
6. The theory that the largest, most sophisticated customers are the ones who would be affected by the transaction is not supported by the evidence. All of the services being considered are undifferentiated: they involve collecting and disposing of waste. Contracts are won through competitive bidding, in many cases under strict public procurement rules. The CMA’s phase 1 decision paints a picture of Veolia and Suez competing for all-encompassing, integrated contracts to provide all waste management services that local authorities need, including building and operating their facilities. That type of contract is a thing of the past. Local authorities are sophisticated organisations with considerable procurement expertise, advised by specialist consultancies, applying a public procurement framework which encourages the tendering of smaller contract lots and (increasingly) using smaller local suppliers and subcontractors. Customers can and do choose from a range of competitive alternatives at every stage of the process and the transaction will not change this.
7. In these undifferentiated markets, the merging parties’ market shares are unproblematic on any basis, they are not particularly close competitors (as shown by the bidding data, which is the only direct measurement of closeness available<sup>3</sup>), and there are plenty of rivals at each level of the value chain with the track record and financial resources to compete credibly.

## **II. THE RATIONALE FOR THE MERGER**

8. The phase 1 decision cites Veolia’s public statements and internal documents that articulate Veolia’s rationale for the merger. [REDACTED] the transaction will make Veolia more competitive, and the cost synergies associated with the transaction will allow Veolia to deliver its policy objectives more quickly. It is also true that the transaction was targeted at accelerating Veolia’s sustainability objectives in countries around the world; Veolia faces intense competition in many countries across Asia, North and South America, and Europe. Competition in these sustainability objectives comes from many sources and is evolving as the net zero agenda develops around the world. Increasingly, Veolia faces competition from new directions, including multinational petrochemical companies (*e.g.* Solvay) and energy companies (*e.g.* Total). These activities are quite far removed from the focus of the CMA in a merger investigation concerning UK-specific (and often local) markets.
9. While the transaction was not motivated by the UK specifically, the synergies that Veolia expects to achieve in the UK are still important. Veolia is proud of its record of

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<sup>3</sup> For further detail on the bidding data collection and analysis, *see* [REDACTED].

competing in the UK. It operates in intensely competitive markets with increasingly sophisticated and demanding customers. This trend will not change. The merger with Suez will allow Veolia to achieve around EUR [REDACTED] in cost synergies and efficiencies in the UK alone. One of the levers Veolia has identified to deliver these synergies is to [REDACTED] in the UK, with zero or close to zero additional investment required, just by implementing its own best practices. These savings will be passed on to customers in the form of lower prices and enhanced services to municipal and commercial customers alike.

### III. **MUNICIPAL WASTE MANAGEMENT**

#### A. **The Municipal Waste Journey**

10. Municipal waste management is the responsibility of local authorities. It involves: (i) collecting waste from households; and (ii) treating/disposing of that waste. Collection and treatment/disposal are separate services and, in most cases, different authorities are responsible for collection and treatment/disposal in the same or overlapping local areas. The treatment/disposal of municipal waste itself involves several different activities, depending on the type of waste to be treated/disposed of (*e.g.*, recyclable materials, compostable waste, or residual waste).

##### (i) **Municipal Collection**

11. Municipal waste collection is an uncomplicated (and undifferentiated) activity that involves collecting waste from households. Around half of all local authorities currently perform these services in-house, *i.e.*, they own the collection trucks and employ the people who operate them. Those that do not use in-house provision contract services to a Teckal (a private commercial company that is owned by a local authority and can be appointed without the need for a public procurement process) or a commercial operator.
12. Whoever provides the service, they will need: (i) a fleet of collection vehicles; and (ii) employees to operate them and collect the waste. Collection vehicles are purchased or leased *after* a contract has been won. They have an approximate operating life of seven to eight years – the typical length of a collection contract, which means trucks that have been purchased can be depreciated to zero over the contract period.
13. In about [REDACTED] of Veolia's current municipal collection contracts, the local authority funded the purchase of the collection vehicles itself. To Veolia's knowledge, many of the municipal collection contracts won by competitors are also serviced by vehicles funded by local authorities. One important reason why local collection authorities may fund collection vehicles themselves is because they, as public sector bodies, have access to low-cost prudential borrowing, reducing the overall cost, whoever provides the collection service. This also reduces any barriers to entry for companies seeking collection contracts.
14. Similarly, suppliers do not need to employ local collection staff in order to bid for a contract. When a supplier wins a contract, employees transfer to the new supplier from

the previous supplier automatically by operation of the Transfer of Undertakings, Protection of Employment Regulations 2006 (“TUPE”).

15. The local authority also determines where the waste should be deposited. This may be directly to a sorting/disposal facility operated on behalf of the relevant local waste disposal authority or to a waste transfer station. Waste transfer stations are sites at which waste is tipped and temporarily stored before being bulked and taken to sorting and/or treatment facilities elsewhere. In most cases, the waste transfer stations are owned by the relevant local disposal authority. There were just over 2,700 sites permitted to operate as waste transfer stations in England alone at the end of 2020, of which the merging parties own or operate fewer than [REDACTED]%. Local authorities also own the depots, where vehicles are parked overnight (or stored when not being used).
16. Local authorities instruct collection contractors to drop off waste at particular disposal facilities or transfer stations (often owned by the disposal authorities). Consequently, these sites are frequently not operated or owned by the same company that wins the collection contract. There is no inherent advantage to a bidder for collection contracts also owning or operating disposal facilities or waste transfer stations when pitching for collection contracts.
17. The barriers to winning a collection contract are therefore extremely low. There is no need for upfront investment in assets or employees, and there is very little (if any) differentiation between the service offered by different bidders: they will have the same employees, they use the same vehicles, they must deliver the waste to same location(s), and they must perform the services to the same key performance indicators stipulated initially by the procuring local authority in the tender documentation and ultimately in the secured contract. Unsurprisingly, this is therefore a low margin activity (for example, Veolia’s EBITDA is around [REDACTED]%).

**(ii) Treatment, Disposal and Material Recovery**

18. Once waste has been collected, and deposited at the prescribed locations, it is treated or disposed of by different methods depending on the type of waste.
  - Waste that can be recycled or reprocessed is sorted (if not already separated at the time of collection) and then undergoes a “material recovery” process.
  - Residual waste (*i.e.* waste that cannot be recycled) is taken to one of several types of facility to be treated/disposed of: (i) to be burnt at an ERF; (ii) to be disposed of in a landfill; or (iii) shredded, baled and wrapped to form refuse-derived fuel (“RDF”), which may then be exported for incineration in Europe.
19. Private operators may be appointed by waste disposal authorities under treatment/disposal contracts to dispose of collected municipal waste, if the waste disposal authorities choose not to perform the service in-house or through Teckals. In most cases, the treatment/disposal contract stipulates that the waste must be treated at facilities operated on behalf of the local authority, where capacity is reserved or “locked” for that purpose.

20. As noted above, given this stipulation, the fact that a private collection operator also has a disposal facility is irrelevant to its prospects of winning collection tenders (and vice versa); this is true across all treatment and disposal options explained below.

### **Incineration**

21. Most residual waste in the UK is incinerated. The heat generated from the incineration process is used to generate electricity. Incinerators are therefore referred to as “energy recovery facilities” (ERFs) or “energy from waste (“EfW”) facilities.
22. Most ERFs in the UK were developed and operated on behalf of local authorities between the mid-1990s and 2015 under public-private partnerships (“PPPs”), including Private Finance Initiative (“PFI”) contracts, as part of a wave of infrastructure development aimed at diverting waste from landfill. These PPP/PFI contracts are long-term arrangements under which private companies were contracted to design, build, finance and operate (“DBFO”) infrastructure projects for UK public authorities. All but one of Veolia’s ERFs were built and are operated on behalf of local authorities under a PPP/PFI contract.
23. The maturity of the sector (now that this local authority infrastructure has been built) coupled with the termination of the PFI scheme mean that new contracts for the DBFO of new ERFs, and indeed other waste treatment infrastructure, are now rare. Veolia is aware of only three since 2016: the pending Tees Valley Joint Waste Management Contract, the Ness Energy Project Residual Waste Treatment contract recently tendered by three north east Scottish local authorities to DBFO a new ERF in Aberdeen (awarded to a consortium involving Acciona and Indaver),<sup>4</sup> and Stoke-on-Trent’s upcoming procurement process for the DBFO of a new ERF to replace the Hanford ERF at the end of its life. Veolia is not aware of any other new DBFO contracts.
24. Conversely, there is now considerable investment in the development and construction of privately-owned ERFs (also known as merchant ERFs), in response to the increasing demand for incineration as an alternative to landfill. This trend is set to continue. Out of the 22 ERFs that had reached financial close at the beginning of 2021, and that will have commenced operation between 2020 and 2025, 18 are being developed as merchant ERFs.<sup>5</sup>
25. The shift to tenders for O&M of existing local authority infrastructure (as opposed to DBFO) contracts is therefore a long-term structural shift in tendering behaviour by local authorities.

### **Landfill**

26. Landfill involves the disposal of waste in structures specifically designed for its containment, built in or on the ground, and in which the waste is isolated from the

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<sup>4</sup> See <https://www.letsrecycle.com/news/acconia-and-indaver-favoured-for-aberdeen-efw-contract/>.

<sup>5</sup> The remaining four ERFs are being built under PPPs, part of contracts that commenced in 1999, 2011, 2015 and 2019.

surrounding environment (groundwater, air, and rain). Landfill is at the bottom of the waste hierarchy, and its use is declining, but it is still commonly used for contingency waste disposal and for disposal of waste that is not suitable for other methods of treatment. Disposal of waste by landfill is typically agreed by spot contract.<sup>6</sup>

### **Sorting**

27. Waste that is capable of being recycled or reprocessed may need to be sorted before it can be recycled or reprocessed. Local authorities dictate how recyclable waste is collected (*e.g.*, all recyclable waste in the same bin, different materials separated at source, or somewhere in between).
28. Where recyclable waste streams are collected together, they need to be sorted before being treated. Sorting primarily occurs at material recovery facilities (“**MRFs**”). Like ERFs, many of the MRFs in the UK were developed and are now operated on behalf of local authorities under PPP/PFI contracts, whereas others are operated by local authorities themselves or are purely private assets. Waste left that is incapable of being recycled after sorting (known as MRF residues) is usually incinerated.<sup>7</sup>

### **Material Recovery**

29. Material recovery involves reprocessing waste in preparation for reuse and recycling. The principal materials that are recovered are paper, glass, plastics and metals (“dry mixed recyclables”), wood, and organic waste.<sup>8</sup>
30. **Composting** is the simple agricultural process by which certain organic waste is decomposed. The resulting product is compost which, depending on its quality, can be used for soil improvement. Composting takes place in two different ways: in-vessel composting (“**IVC**”) and open-windrow composting (“**OWC**”).
  - OWC is used for the composting of garden waste (*e.g.* grass cuttings, pruning and leaves). The material is piled up in rows that are open to the environment, allowing the material to break down into compost. OWC cannot be used for food waste.
  - IVC facilities process mixed organic waste, including food waste, in an enclosed container or vessel, which prevents contamination of the environment from decomposition of food waste and animal by-products.

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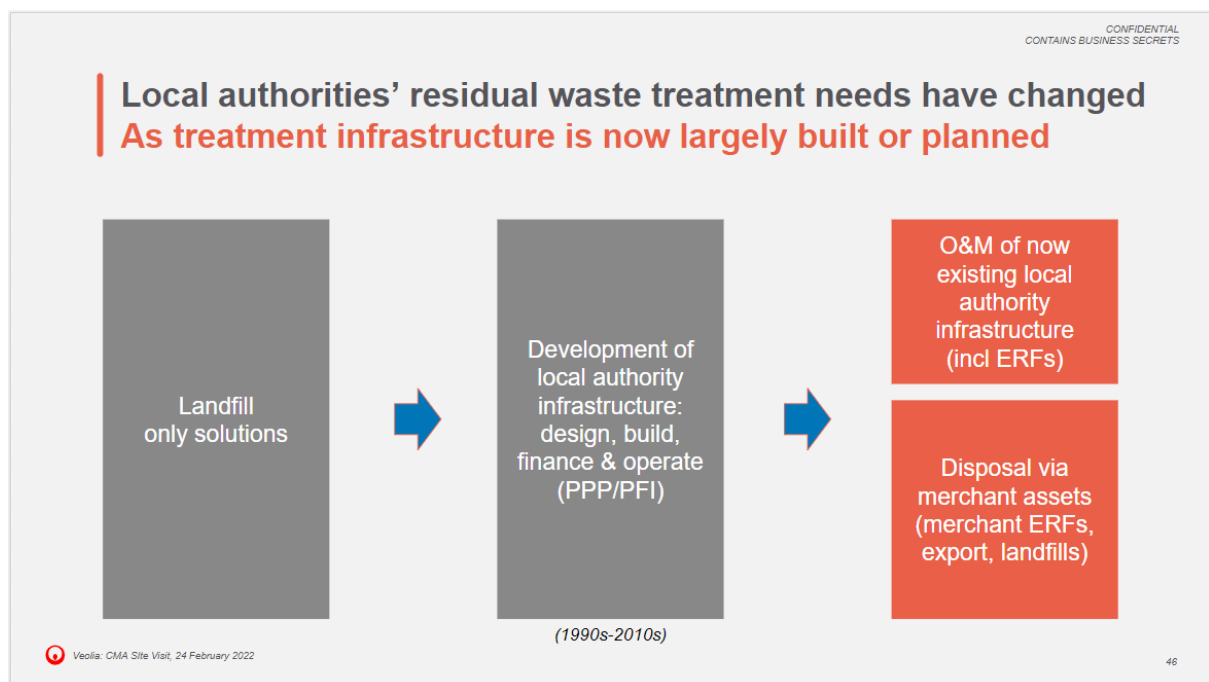
<sup>6</sup> At phase 1, the CMA found no realistic prospect of an SLC in any landfill market. Landfill is therefore not considered further in this submission.

<sup>7</sup> At phase 1, the CMA found no realistic prospect of an SLC in any sorting market. Sorting is therefore not considered further in this submission.

<sup>8</sup> There is no overlap between the parties activities in relation paper, glass, plastics, or metals recycling. At phase 1, the CMA found no realistic prospect of an SLC in relation to wood processing. Accordingly, these markets are not considered further in this submission.

## B. The Local Authority Procurement of Waste Management Services

31. The procurement of municipal waste management services is undergoing a fundamental and generational change. When local authorities began outsourcing waste management services around 25 years ago, there was a pressing need for new waste treatment infrastructure. This resulted in large-scale PPP/PFI DBFO projects being tendered to commercial operators (including Veolia, Suez and many others), who competed to: (i) construct, finance and operate a waste treatment facility; as well as (ii) treat the local authority's waste in that facility, with financial risk largely assumed by the commercial operator.
32. Contracts are no longer procured this way and some of the long-term PPP/PFI contracts are nearing their end, although others have many years left to run.<sup>9</sup> Veolia is aware of only two PPP projects involving new waste treatment infrastructure, which have been tendered or are currently in tender, since 2016: the Ness Energy Project Residual Waste Treatment contract and the Tees Valley Joint Waste Management Contract, which in both cases only cover the DBFO of new ERFs. Veolia also understands that Stoke-on-Trent City Council is preparing to launch its procurement process for the replacement of the Hanford ERF, but is not aware of any more PPP projects involving new waste treatment infrastructure expected in the coming years.



*Source: Veolia Site Visit Presentation, 24 February 2022, Slide 46*

33. The new generation of waste treatment/disposal contracts will involve treating local authority waste and, in some cases, operating and maintaining the local authority's existing waste treatment facilities. They no longer involve building new

<sup>9</sup> Veolia expects that seven PPP/PFI contracts will reach the end of their term over the next three years. The local authority counterparties to those expiring PPP/PFI contracts will then need to decide whether and how to procure waste management services.

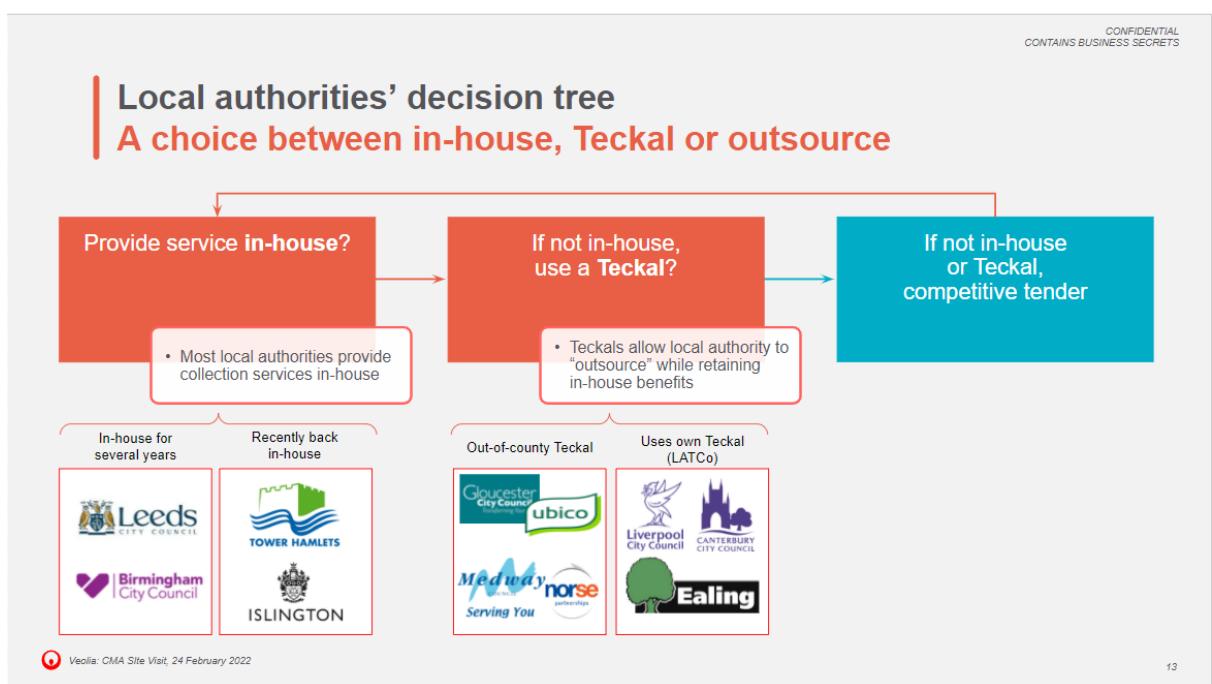


infrastructure. Further, local authorities increasingly procure services for the treatment of different waste streams separately (for example, separate contracts for dry recyclates, green and food waste, and residual waste).

### (i) The Procurement Process

34. Today, local authorities have three broad options when procuring waste management services: (i) they can provide the service in-house; (ii) they can appoint a Teckal or a local authority-owned trading company (“LATCo”) (e.g. The Coventry and Solihull Waste Disposal Company Limited<sup>10</sup>); or (iii) they can award contracts to commercial operators under a public procurement process. And they can use a combination of all three. When making decisions as to how to meet their waste management obligations, UK Government guidance encourages local authorities to “conduct a proportionate delivery model assessment before deciding whether to outsource, insource or re-procure a service through evidence-based analysis.”<sup>11</sup> This decision process is illustrated below.

### Local Authority Waste Management Decision Process

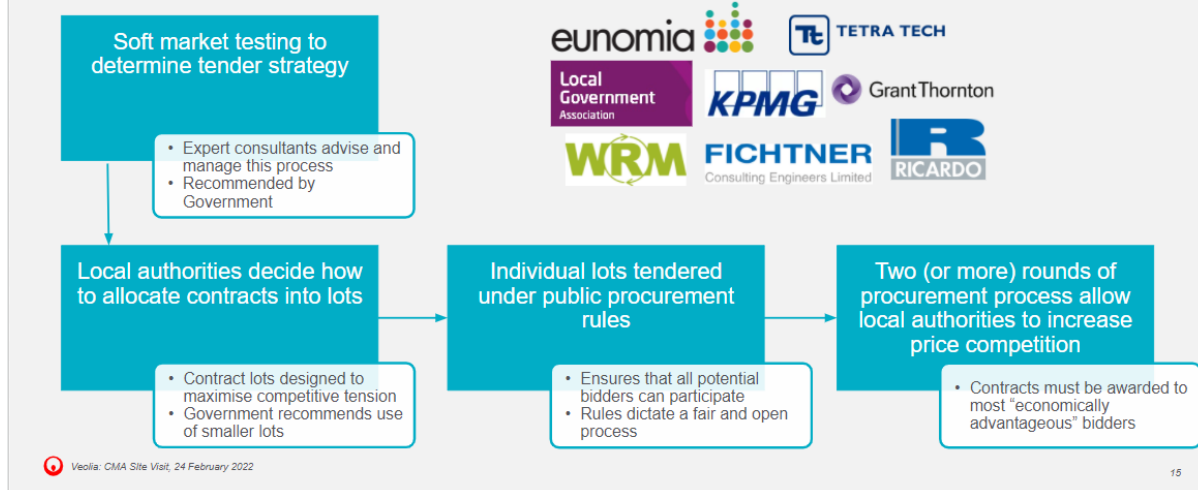


<sup>10</sup> The LATCo is owned jointly by Coventry City Council (65%), Solihull Metropolitan Borough Council (33%), Leicestershire County Council (1%) and Warwickshire County Council (1%).

<sup>11</sup> See HM Government, National Procurement Policy Statement, June 2021.

## Local authorities

### Design their competitive tenders to achieve best value



Source: Veolia Site Visit Presentation, 24 February 2022, Slides 13 and 15.

### In-house Supply and Teckals

35. First, local authorities consider whether to supply services in-house. As stipulated in Guidance from the Local Government Association, "*major procurements should always be preceded by an assessment of the relative merits of procuring a solution in the market versus delivering the solution in house.*"<sup>12</sup> This process is carried out by means of "soft market testing", usually with the advice of expert consultants. It involves testing the commercial market, understanding whether and how best to allocate different contracts into commercial lots or to provide some or all services in-house.<sup>13</sup>
36. Many local authorities meet at least some of their waste obligations in-house. By way of example:
  - Around 49% of local authorities in England of all sizes undertake waste collection in-house.<sup>14</sup> Eight out of the 15 largest local authorities and nine out of the 20

<sup>12</sup> See Local Government Association, A Councillor's Guide to Procurement, 2019 edition, p. 12.

<sup>13</sup> See Regulation 40 of the Public Contracts Regulations 2015, which provides that public bodies "*may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.*" Public bodies can also "*seek or accept advice ... from market participants.*" See for example, Birmingham City Council's October 2017 soft market testing questionnaire, available at: [https://www.whatdotheyknow.com/request/waste\\_management\\_market\\_engageme#incoming-1099715](https://www.whatdotheyknow.com/request/waste_management_market_engageme#incoming-1099715).

<sup>14</sup> Environmental Services Agency report: The Effects of Competition on Municipal Waste Collection Performance, January 2020.

smallest local authorities collect waste in-house.<sup>15</sup> Further, in the parties' experience, in-house supply has become more attractive in recent years, with [REDACTED] of Veolia's municipal waste collection contracts and [REDACTED] of Suez's contracts being taken back in-house or awarded to a Teckal over the last five years.

- Several local authorities own and operate their own waste sorting, treatment and disposal facilities:
    - The Coventry and Solihull Waste Disposal Company Limited owns and operates an ERF in Coventry;<sup>16</sup> similarly London Energy Limited, a LATCo fully owned by the North London Waste Authority, owns and operates the Edmonton ERF and has recently signed a design and build contract with Spanish construction company Acciona for a replacement ERF the local authority will operate (as the existing facility is coming to the end of its useful life).<sup>17</sup>
    - Exeter City Council, Bristol City Council (through a Teckal), and Glasgow City Council are examples of local authorities owning and operating MRFs. Sherbourne Recycling Limited (a LATCo owned by Coventry City Council and eight other Midlands local authorities<sup>18</sup>) also announced in April 2021 the start of construction for a new MRF near Coventry.
    - A number of local authorities in Scotland and Wales operate their own landfills.
37. Local authorities that decide not to manage waste in-house can appoint a Teckal, a private company owned by a local authority. This may be a Teckal owned by the same local authority or one owned by another local authority.
38. Teckals can be awarded contracts without a public procurement exercise – indeed, that is the point of a Teckal – which explains why Teckals do not appear in the parties' tender data. The parties have already provided the CMA with a number of examples of waste management contracts being awarded to Teckals. Further examples include:

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<sup>15</sup> Source: BDS Data. Size of local authority measured by tonnes of waste collected. *See also* Updated Issues Meeting Slides, 17 November 2021, slide 42.

<sup>16</sup> The LATCo is owned jointly by Coventry City Council (65%), Solihull Metropolitan Borough Council (33%), Leicestershire County Council (1%) and Warwickshire County Council (1%).

<sup>17</sup> *See* <https://www.letsrecycle.com/news/nlwa-formally-signs-683m-edmonton-contract/>.

<sup>18</sup> The LATCo is owned by eight local authorities around the Midlands: Coventry City Council, Nuneaton and Bedworth Borough Council, North Warwickshire District Council, Rugby Borough Council, Stafford District Council, Solihull Metropolitan Borough Council, Walsall Council and Warwick District Council.

- Ubico, a Teckal owned by seven different local authorities,<sup>19</sup> was recently awarded Gloucester City Council’s municipal collection, street cleansing, and grounds maintenance services contract. The contracts commences March 2022.
  - Norse, a Teckal owned by Norfolk County Council, provides waste collection services to over a million residents in eight local authorities.<sup>20</sup>
39. If local authorities decide that they are not achieving value for money through the tender process, they can decide not to award the contract to a private company, and instead take the contract in-house or award it to a Teckal.
40. Veolia is aware of [REDACTED] contracts that have switched from external supplier to Teckal since 2014. [REDACTED] of Veolia’s municipal collection contracts have been taken back in-house or awarded to a Teckal over the last five years. There are also examples such as Liverpool City Council, which previously used a joint venture between itself and Amey/Enterprise, but then brought the activities in-house by buying Amey/Enterprise’s share.
41. In-house and Teckal options therefore impose a constraint on commercial operators throughout the tender process and will continue to do so post-merger.

### **Outsourcing to Commercial Operators**

42. If a local authority chooses to outsource any waste management services to a private company, it is obliged to conduct a competitive tender process in compliance with the Public Contracts Regulations 2015. The Regulations ensure that tenders are fair and transparent and that the criteria for awarding a tender “*ensure the possibility of effective competition*.”<sup>21</sup>
43. As part of its procurement planning, a local authority must first decide how best to allocate the waste management services being outsourced to contract lots. Public procurement rules and UK Government policy encourage public authorities to tender their waste management services individually or as small packages, to increase competition, encourage smaller operators to compete, and drive value for money. They encourage all contracting authorities to divide contracts into lots as standard practice.<sup>22</sup> Regulation 46(2) of the Public Contracts Regulations 2015 also obliged contracting

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<sup>19</sup> Ubico’s shareholders are: Cheltenham Borough Council, Cotswold District Council, Forest of Dean District Council, Gloucestershire County Council, Stroud District Council, Tewkesbury Borough Council, West Oxfordshire District Council.

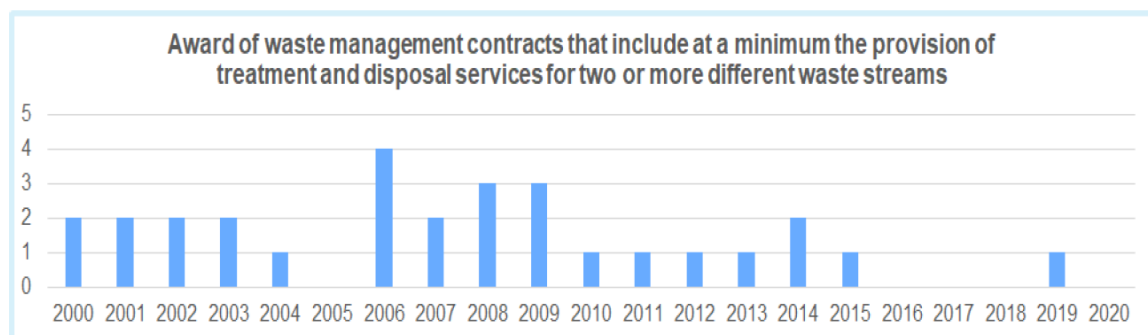
<sup>20</sup> Norse has waste collection contracts with Amber Valley (previously supplied by Veolia), East Suffolk, Great Yarmouth, Wellingborough, Havant, Daventry, East Hampshire, and Medway (previously supplied by Veolia).

<sup>21</sup> See Regulation 18 of the Public Contracts Regulations 2015.

<sup>22</sup> See Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors. These EU directives were implemented by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016.

authorities that deviate from this practice to explain why they have decided *not* to subdivide their contract into lots.

44. The result is that local authorities typically divide their waste collection and treatment/disposal contracts into lots, rather than contracting one supplier to provide all or a majority of its collection and treatment/disposal needs. The figure below illustrates this trend.<sup>23</sup> It shows the reduction in the number of “multi-faceted” contracts that include (as a minimum) the provision of treatment and disposal services for two or more different waste streams over time. Only one such contract - for the Greater Manchester Waste Disposal Authority - has come to market in the last six years, and only in circumstances where the Authority faced extreme time pressure because its existing PFI contract had run into serious difficulties. As a result, the Authority had less time to carry out soft market testing or allocate services into lots than would otherwise be the case.



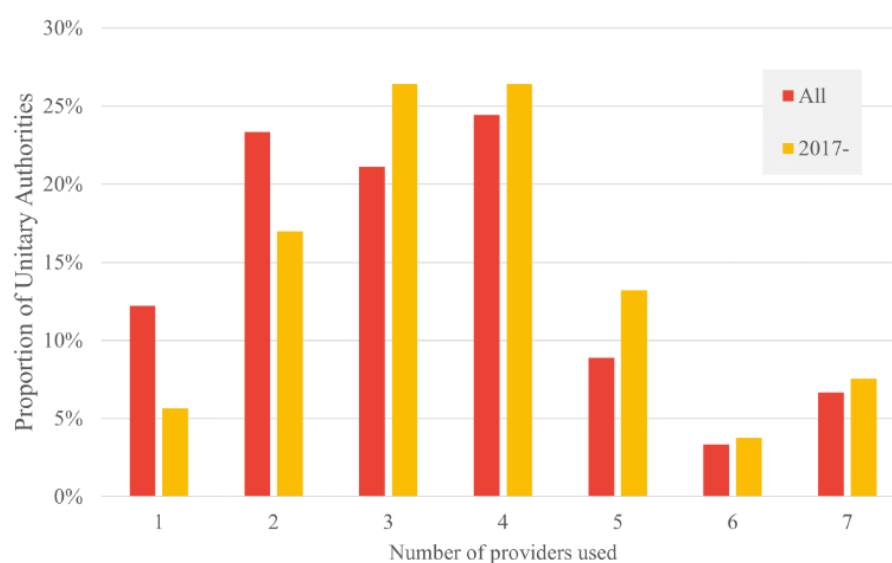
45. In most local areas separate bodies are responsible for waste collection and waste treatment/disposal. Waste Collection Authorities (“WCAs”) are responsible for collection; Waste Disposal Authorities (“WDAs”) are responsible for disposal. WCAs and WDAs contract independently for their respective needs and their areas are generally not conterminous. By definition, collection and treatment/disposal are tendered separately in these cases.
46. Veolia’s economic advisers also conducted an analysis of whether Unitary Authorities (authorities that have responsibility for both collection and disposal) tend to separate their waste collection and disposal contracts. The results show that almost all (82 of the 91) Unitary Authorities use more than one provider across their various collection and treatment/disposal contracts.<sup>24</sup>
- Of the 53 Unitary Authorities that entered into a contract since 2017, all but two (Westminster City Council and the London Borough of Bromley) use more than one provider.

<sup>23</sup> Veolia notes that its contracts with [REDACTED] are not included in this chart because they are principally municipal collection contracts with only a very small treatment element.

<sup>24</sup> Source: BDS Data and Veolia. BDS data identifies 79 Unitary Authorities that use more than one provider. Of the remaining 12 Unitary Authorities, Veolia believes that South Gloucestershire Council, Swindon Borough Council, and Darlington Borough Council also use multiple providers.

- 32 of the 53 use a collection provider that does not provide them with any treatment or disposal.
  - At least 47 of these 53 Unitary Authorities use more than one treatment/disposal provider.
47. Even this overstates the number of single multi-faceted contracts. The fact that a Unitary Authority uses only one provider does not mean that the services were tendered as a single contract. For example, the waste collection and disposal service provided to (i) Westminster City Council and (ii) the London Borough of Bromley are provided by a single supplier in each case. Both of these authorities tendered separate contracts for each waste management service (under one procurement exercise in the case of Bromley, and separate procurement processes in the case of Westminster); it just so happened that the same supplier won them. Veolia's bidding data shows that [REDACTED].
48. Further, as the figure below shows, the median number of waste service providers currently used by Unitary Authorities is three, with 64% of them using three or more different providers. Looking at more recent contracts, those starting since 2017, the median rises to four, with 77% using three or more, and 51% using four or more.

**Number of different suppliers used by Unitary Authorities in their current contracts for municipal waste collection and disposal**



49. These figures demonstrate that splitting services across providers is not just a theoretical possibility: almost all Unitary Authorities that have tendered in the last five years have contracted services separately, with the majority awarding contracts to four or more providers.

**C. Competition for Municipal Waste Management Services**

50. The market characteristics described above are designed to foster competition and, ultimately, ensure value for money. They give local authorities choices at every step of

the way. They facilitate wide and open competition for waste management contracts. And they create bidding markets with strict rules, which guarantees that operators submit their best commercial offers every time they compete regardless of how many other bidders are participating. Indeed, Veolia would rarely have reliable information on the number or identity of other bidders participating in a public tender opportunity (until the contract has been awarded, when it would typically find out the identity of the winner from public sources).

51. The reality is that the parties' market shares are a static view of competition (a "snapshot", largely of competition that took place many years ago) that does not give rise to competition concerns in the dynamic context of vibrant competition at the time of tendering for every contract – including the largest municipal contracts and those that the CMA seeks to characterise as "complex". This includes competition from Biffa, Serco, Viridor, Urbaser, Cory, FCC, Amey, Paprec, MVV and Beuparc. Veolia has submitted bidding data to the CMA showing the competitors that have won contracts for which Veolia also bid. [REDACTED]. It is not rational to say that Suez is a strong competitor but most of these competitors are not, nor is it rational to say that Suez is a particularly close competitor to Veolia.

**(i) Waste Collection**

52. On any basis, the parties' combined share of municipal waste collection is below [REDACTED]% with an increment of [REDACTED]% (by number of households).<sup>25</sup> These figures also grossly overstate the parties' shares as they exclude in-house supply and Teckals, which pose significant competitive constraints. When these constraints are taken into account, the parties' combined share is very low at [REDACTED]% with a very small increment of [REDACTED]% (by number of households).
53. Since collection contracts can last between eight and 10 years, the estimates above do not reflect competition today. An analysis of the parties' shares of supply by number of contracts (excluding in-house supply, but including Teckals) indicates that Veolia and Suez provide services under only [REDACTED]% of the external supplier contracts that started in the last five years. The increasing competition in the municipal waste collection market is further evidenced by the fact that: (i) Veolia has lost [REDACTED] municipal waste collection contracts to [REDACTED] different competitors since March 2017, [REDACTED]; and (ii) Veolia's operating margins for municipal waste collection contracts are consistently narrow.
54. An analysis of Veolia's bidding data submitted to the CMA shows that Veolia faces closer competition from [REDACTED] than it does from Suez. As demonstrated by the charts below, Suez competed against Veolia in only [REDACTED]% of the tenders in which Veolia participated from 2016 to 2020, far lower than [REDACTED]. In addition to the competitors listed in the bidding data, [REDACTED] won the contract for the [REDACTED] against [REDACTED] (the incumbent).

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<sup>25</sup> See Non-Hazardous Waste Chapter of the Final Merger Notice, 7 October 2021, paragraph 15.33.

[REDACTED]

55. Of the [REDACTED] tenders that Veolia participated in and did not win over the same period (2016-2020), only [REDACTED] were won by Suez. Moreover, in the period between March 2019 and December 2020, Veolia was unsuccessful in [REDACTED] municipal waste collection tenders, losing to each of [REDACTED]. It has participated in only [REDACTED] won by Suez in that period. In addition, in the period for which bidding data is available, Suez has [REDACTED] municipal collection tender where Veolia was the incumbent. In fact, Suez has won only three municipal waste collection tenders since 2017.<sup>26</sup> [REDACTED]. And as the CMA will be aware from the parties' responses to Question 31 of the first phase 2 Section 109 Notice, [REDACTED].

[REDACTED]

**(ii) Incineration**

56. The CMA's phase 1 decision conflates different types of competition that take place in relation to incineration. It confuses competition that takes place on local merchant markets (*i.e.*, external sales of capacity either to other waste management companies or through internal contracting) with competition for municipal contracts, which is national.
57. Municipal treatment/disposal contracts can take two forms:
- Treatment of a local authority's waste via incineration at the authority's own ERF. In the past, these often included a "design and build" element. In the future, they will mostly involve the operation and maintenance ("O&M") of existing local authority facilities (or local authorities may decide to tender separately for O&M of facilities and for disposal of residual waste). Either way, this competition takes place at a national level. There is no need for a local presence to be able to compete for a contract to operate (or even to build) a facility anywhere in the country.
  - Treatment of a local authority's waste by incineration at an external ERF (where the authority does not own an ERF). Competition is again national, although the successful bidder will need to either have access to or contract for sufficient incineration capacity in the local area. The latter types of contracts are widely available. The large volumes typically involved mean that controlling small volumes of merchant capacity in the local area is largely irrelevant to competition.
58. Separately, waste management companies who control merchant capacity can use this to compete in local markets for incineration. A waste management company may control merchant capacity at its own merchant ERF, under a Fuel Supply Agreement at a third-party ERF, or as left-over capacity at a local authority-owned ERF that it operates. It can either use this *controlled merchant capacity* internally (for either

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<sup>26</sup> Doncaster Metropolitan Borough Council (2017, where Suez was the incumbent), Somerset Waste Partnership (2019), Royal Borough of Kensington and Chelsea (2020, where Suez was the incumbent). [REDACTED]. Veolia also notes that Suez was awarded a contract with Warwick District Council in 2020, which was a negotiated extension rather than a competitive tender.



municipal<sup>27</sup> or commercial and industrial (“C&I”) waste) or sell it via spot volumes (including short-term contracts). Competition here is local, to attract waste within the local area.

**National Competition for Local Authority Contracts with an Incineration Element**

59. There is intense competition for local authority incineration contracts, as is evidenced by the bidding data submitted to the CMA during phase 1. Veolia most frequently faces competition from [REDACTED], more frequently than Veolia faces Suez. Veolia has faced competition from a number of competitors, even if looking only at large contracts worth more than £[REDACTED] (in such tenders, Veolia has competed against [REDACTED]). This bidding data also shows [REDACTED]). In this tender, Veolia faced competition from [REDACTED], in addition to Suez.
60. Competition for past DBFO of ERF contracts is in any event largely irrelevant, as very few new DBFO contracts have come or are expected to come to market. As to the next generation of ERF contracts, [REDACTED] any contracts that are exclusively for O&M of ERFs (*i.e.* without any DBFO element). Veolia expects that [REDACTED]. The parties’ shares today are [REDACTED].
61. It is impossible to say that the parties have a strong position as regards future O&M contracts for local authority-owned ERFs.
  - DBFO contracts are very different in scale and scope from O&M contracts. It is a fundamentally different proposition to design, build and finance a new ERF than it is to take over operations in an existing ERF.
  - Shares of installed DBFO contracts are only partially indicative of historic competition for contracts, not about competition today or in the future for wholly different O&M contracts.
  - There is no evidence that Veolia and Suez have a better position than other current operators of local authority ERFs and merchant ERFs, meaning that the number of credible competitors is in double figures.
62. As already mentioned, there are many new merchant ERFs being constructed. There is no technical difference between a merchant ERF and a municipal ERF; they use the same technology to do the same thing. Competition for future O&M contracts will therefore come from current operators of local authority ERFs (such as FCC, Paprec, MVV, Viridor, and Urbaser) and a much larger number of merchant ERF operators (such as enfinium (formerly WTI), Covanta, Bouygues, Pinnacle, Spencer, SSE, Vital Energy, Vogen/Aviva, and Indaver).
63. And there can be no expectation that an incumbent operator will simply continue when ownership of the ERF reverts to the local authority. New contracts have to be tendered on a fair and open basis under the public procurement rules. There can therefore be no

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<sup>27</sup> Where it is used for municipal waste, in this context, this is generally small volumes of waste on a contingency basis.

reasonable basis for concluding that the merger would result in a substantial loss of competition in any national market for the O&M of ERFs.

#### **Local Competition for ERF Merchant Capacity**

64. Under the legacy PPP/PFI contracts, the successful DBFO contractor is required to treat (incinerate) the relevant local authority's waste and therefore reserve most of the capacity at the ERF it operates on behalf of the local authority for that purpose. After this, if any treatment capacity is left over at the ERF, the operator can use this residual (merchant) capacity for its own commercial operations or sell that capacity in a number of ways (*e.g.*, fuel-supply agreements or spot contracts). Operators are incentivised to operate ERFs at full capacity by the terms of their local authority contracts and to maintain the efficiency of the plant, in particular due to revenues from production of electricity and sometimes heat. Competition for this top-up (merchant) capacity takes place at a local level, where operators of local authority ERFs have to compete with merchant ERFs and other disposal options to secure tonnages. Procurement of merchant or local authority-owned ERF capacity at a local level is typically driven by route efficiency, rather than ownership structure.
65. The CMA's phase 1 decision identified just four local areas where it believed the merger could result in an SLC, and only when applying an approach to measure competition within the catchment areas that is inconsistent with its methodology in other recent cases, and adopting an extremely cautious share of supply threshold. More fundamentally, the decision conflates questions of national and local competition, leading to a misunderstanding of how local competition takes place in these local markets.
66. Both Veolia and Suez have a modest presence in the supply of merchant capacity in ERFs. Veolia and Suez have a small amount of residual capacity at local authority ERFs that can be sold to other waste management companies or used for their own purposes. Veolia operates only [REDACTED]. [REDACTED]. In contrast, merchant ERF operators depend on selling all of the capacity at their ERFs to be viable. Veolia and Suez simply are not important competitors in these local merchant markets in any meaningful sense.

#### **(iii) Composting**

67. Composting services – and OWC in particular – is a hugely competitive market. OWC facilities are extremely basic. All that is required is an open air space (*e.g.*, farm land) and standard agricultural and earth-moving equipment for loading and tipping.
68. Waste management companies and specialist operators compete on a national market to win composting contracts with local authorities and, as in the case of incineration, can sell residual capacity to other operators on local merchant markets. There are many companies active in OWC – too many to mention – but they include: Urbaser, Agripost, Biffa, Greener Composting, Material Change, enVar, Biogen, Wastewise, Mick George, SED Services, Viridor, Vital Earth, Enovert, Brosters, MEC Recycling, Amey, Jack Moody Group, and TW Composting.

**(iv) “Complex” Waste Management Contracts**

69. There is no distinct category of “complex” contracts and there is no definable group of customers that would fall into such a category. Municipal contracts vary in size, in the number of services included, and in other respects. In its phase 1 decision and phase 2 Issues Statement, the CMA identified a number of characteristics that suggest “complexity”, such as multi-faceted contracts covering several waste management services, particularly large contracts in terms of value or duration, and “specific local authority requirements”.
70. This description is sufficiently vague and flexible to capture the majority of the parties’ municipal contracts, including contracts that cannot on any reasonable basis be considered complex for any waste management company. It also refers to contract features that *lower* barriers to competition as complex (*e.g.* the local authority offering to fund capital investment itself through the use of prudential borrowing, which facilitates bidding by a wider range of suppliers, is sometimes deemed to be tendering a complex contract).<sup>28</sup>
71. Veolia does not deny that the term “complex” appears in its internal documents. [REDACTED].
72. In the absence of a more precise definition, it is difficult for Veolia to respond to the specific case being made. What is clear, however, is that there is and will continue to be vibrant competition for all municipal waste management contracts, wherever they are on the spectrum of size or “complexity”, however that is defined.<sup>29</sup>
73. As explained above, the bidding process and public procurement rules ensure an open competitive process for all municipal waste management contracts. And there are at least six other significant rivals that have successfully bid for what could be considered the “most complex” contracts (based upon a conservative interpretation of the CMA’s phase 1 definition).
74. In addition, Veolia and Suez do not have large market shares on any reasonable definition of “complex contracts”, nor are they particularly close competitors, competing directly against each other for a minority of contracts and rarely losing contracts to each other.
75. Even adopting the most extreme interpretation of the CMA’s theory of harm (*i.e.*, focusing on the narrowest subset of contracts and excluding Teckals and in-house supply), the transaction would at worst be a “six to five” merger in a market characterised by intense and regulated bidding competition. Moreover, competition for these contracts therefore takes place only in circumstances where the customer has *chosen* to tender for services in this way, rather than breaking them down into smaller lots, and where the customer has the option – even after beginning a procurement process – of deciding to provide the services in-house or use a Teckal instead.

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<sup>28</sup> For further information, *see* [REDACTED].

<sup>29</sup> [REDACTED]

Moreover, for the reasons already explained, there is vibrant competition for each component part of even the “most complex” contracts.

76. The notional category of “complex” contracts is an artificial construct with no clear definition. Veolia does not recognise a separate category of complex contracts, nor does it agree with the factors that the CMA suggests as indicators of complexity. But, ultimately, none of this matters because there is a sufficient number of credible bidders to ensure intense competition for all municipal contracts, however they are packaged.

#### **IV. COMMERCIAL AND INDUSTRIAL WASTE COLLECTION**

##### **A. Introduction to C&I waste collection**

77. The collection of C&I waste means the collection of waste from factories and other industrial premises, as well as offices and shops. Once collected, it is the responsibility of the supplier to dispose of the waste, either using their own facilities or a third party’s facilities. C&I waste collection is generally operated separately from municipal collection. Once collected, however, C&I waste is treated in essentially the same way as municipal waste. It is deposited at a disposal facility or a waste transfer station (from where transfer in bulk to a disposal facility is arranged by the waste transfer station operator).
78. C&I collection operators require access to collection trucks (and depots to park them) and staff to operate them, supported by access to waste transfer stations (of which there were just over 2,700 permitted sites in England alone in 2020), and disposal facilities, all of which are widely available. Trucks and staff are deployed in rounds to collect waste from multiple C&I customers. Contracts are negotiated either through tenders or bilateral contract negotiations, and are typically contracted for shorter periods of time (often one to three years) compared with municipal waste collection contracts. Larger customers generally use formal tender processes when procuring services.

##### **B. Competition in C&I waste collection**

79. C&I collection is a highly fragmented market with strong regional and local players. This means there is no single source of reliable market share data. Veolia has estimated shares using several different third-party sources. This shows that the parties’ share of C&I collection services is estimated to be below [REDACTED]% on many bases, and would be below [REDACTED]% even on the most conservative basis.<sup>30</sup> The increment resulting from the transaction is no higher than [REDACTED]%, even on the most conservative basis. Moreover, Biffa (which has just acquired Viridor’s C&I business) would remain the clear market leader after the transaction.
80. In the phase 1 decision, the CMA placed little weight on the shares of supply submitted by the parties because there are no reliable market size estimates and because, in the CMA’s view, there is significant differentiation between suppliers in the market. But *together*, the share estimates do present a consistent picture of the C&I market. The share estimates are low with a tiny increment on all bases – even the most conservative.

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<sup>30</sup> [REDACTED]

As regards differentiation, it is not true to say that is a significant factor. All suppliers use the same trucks and the same bins, take the waste to the same treatment/disposal facilities, rely on sub-contracting, and provide customers with the same data (by law).

81. The CMA's concern that the merger would reduce competition for C&I customers with a national presence is unsupported by the data. The only supplier in the market that has close to full national coverage is Biffa, covering 95% of UK postcodes. All other suppliers vary in their geographic coverage and all (including Biffa) rely on subcontracting to provide services to customers with a large geographic footprint.
82. As shown in the figure below, Veolia relies on subcontractors in most geographical areas in the UK. Around [REDACTED]% of Veolia's C&I revenues for "national accounts"<sup>31</sup> are subcontracted to other suppliers. Similarly, [REDACTED]. It is irrational to say, as paragraph 32 of the Issues Statement does, that some suppliers have a preference for a single supplier nationwide and that Suez is one of the only three (alongside Biffa and Veolia) that can do this. If such customers are truly a relevant segment, then Suez certainly does not compete in it.

[REDACTED]

83. Accordingly, even without a national presence, suppliers can compete for "national" accounts by subcontracting to other providers. Other than Biffa, the strongest national competitors are brokers. Moreover, some "national" contracts involve collection from a small number of distribution centres close to urban centres. This increases the ability for a range of suppliers to compete for "national" contracts, including those with limited geographic reach.
84. Brokers are able to provide a single customer interface and client relationship, while combining the cheapest and best waste collection companies across the country to provide services wherever needed. They can tailor their offering precisely to the customer's needs, and they offer customers the same quality of data that Veolia can offer. The trend towards increased digitalisation and technology-enabled services is being particularly leveraged by brokers in terms of customer-facing IT interfaces, which they have developed on a customised basis and continue to enhance with targeted acquisitions, as well as helping them put together their supply chain of local operators.

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<sup>31</sup> "National accounts" refers to the segmentation of C&I customers used by Veolia internally, whereby "national accounts" are customers whose sites under contract are located in two or more of Veolia's Commercial territories.

## **C&I Collection Providers Competing for National Accounts**



85. Suez is not a particularly close competitor to Veolia, whether for “national”, regional or local customers, and this is demonstrated by the parties’ bidding data. Focusing on tender data for multi-regional accounts (*i.e.* customers covering two territories or more [REDACTED]), the data show that Suez is a weak constraint on Veolia for these accounts. [REDACTED] exercise a much more significant competitive constraint on Veolia. [REDACTED]. As for Suez, it is one of a number of similarly sized players competing for multi-regional accounts. Veolia’s tender data show that it most often lost to [REDACTED], followed by a much smaller number of losses to competing waste management companies such as [REDACTED],<sup>32</sup> as well as brokers such as [REDACTED].

## **V. O&M OF WATER AND WASTEWATER FOR INDUSTRIAL CUSTOMERS**

### **A. Introduction to Water and Wastewater O&M Services**

86. Veolia and Suez both provide O&M services to industrial customers. This involves operating and maintaining the installed water systems at an industrial site. For example, a factory that uses water in an industrial process needs to ensure that the system delivering that water within the factory functions properly. Similarly, wastewater generated from the process may need to be filtered and treated before it can be discharged from the factory.
87. The O&M of water systems can either be provided by the owner of the facility or outsourced to third parties. Approximately 85% of all industrial water O&M activities are carried out in-house. Owners of water and wastewater treatment facilities may choose to outsource only some of their O&M activities. Accordingly, water and wastewater facilities O&M contracts vary significantly in scope according to the needs of the customer.
88. There are hundreds of industrial sites with installed water and wastewater systems across the UK. While there is no single reliable estimate of the number of industrial sites with water/wastewater systems, there are several thousand businesses holding

<sup>32</sup> Simply Waste Solutions was acquired by Biffa in 2020, see <https://www.biffa.co.uk/media-centre/news/2020/acquisition-of-simply-waste>.

trade effluent discharge consents in the UK, all of which (by definition) must have wastewater treatment facilities. When looking solely at the activities where Veolia overlaps with Suez, Veolia is responsible for the O&M of effluent/water treatment plants for only [REDACTED] industrial customers. The parties' combined share of outsourced contracts alone (excluding in-house supply) is no more than [REDACTED]% on the most conservative basis.

89. There are many companies competing for outsourced O&M contracts. They include Alpheus, Severn Trent, Ancala, Costain, Aquabio, Envirogen, Business Stream, MWH Treatment, Doosan, Nijhuis, EnviroChemie UK and ACWA. Veolia has also observed new entrants to the market such as Ogden Water and WCS Group. In addition, other regulated water companies ("RWCs") are well placed to provide outsourced services, as Severn Trent has done. Moreover, all of the companies above face competition from external consultants such as MSA Environmental and Jacobs' processing and delivery oversight services, who help customers to self-deliver services by providing technical and engineering advice.
90. There is nothing different or special about the services that Veolia or Suez provide – nor has the CMA suggested as much. The only basis for the CMA's concerns at phase 1 seems to be the fact that Suez's [REDACTED].
91. Veolia and Suez do not compete closely in this sector. The broad "industrial O&M" market covers a wide variety of different customer types and customer needs. Many of those customer types would not be served by Suez. These include:
  - **Ministry of Defence ("MoD") contracts**, which are essentially municipal in nature. These are long-term contracts, which will not be re-tendered for many years. Veolia's main competitors for MoD contracts would be RWCs, who hold other similar (and larger) contracts. Suez [REDACTED].
  - **Customers with networks rather than treatment facilities**. These are again largely municipal in nature. Veolia's main competitors for these contracts would include RWCs. Suez [REDACTED].
  - **Customers who combine energy and water facilities in the same contract**. These are combined multi-service contracts, operated by a single team. Suez does not provide energy service in the UK and would be unlikely to compete for such contracts.
92. Looking solely at the remaining area of overlap, Veolia is a small player with a handful of contracts ([REDACTED]), some of which were last contested many years ago. As discussed above, in this area Veolia faces a wide range of strong competitors, seeing new entrants to the market from both the regulated and non-regulated sector, and faces the constant constraint from in-house supply, with a number of customers in-sourcing their O&M requirements (sometimes with the assistance of consultants).
93. The CMA's phase 1 conclusion that the transaction might result in an SLC in the O&M of water and wastewater systems for industrial customers is therefore very difficult to reconcile with the facts.

## **VI. CONCLUSION**

94. Veolia firmly believes that its merger with Suez will not result in a substantial lessening of competition. It will enable Veolia to compete more effectively by offering lower prices and better services in what are already intensely competitive markets. The CMA's findings at phase 1 were, by their nature, preliminary. They identified a realistic prospect of SLCs based on the evidence available at that time. Given the procedural limitations of the phase 1 process, Veolia had no meaningful opportunity to respond to the CMA's theories of harm in detail or gather additional evidence needed for the CMA to test them. Veolia welcomes the opportunity within the phase 2 process to be able to respond more fully to the CMA's theories of harm advanced at phase 1 and to work closely with the CMA to allay any remaining concerns that it has.